SUBMISSION TO THE

RIGHT TO INFORMATION AND PROTECTION OF PERSONAL INFORMATION REVIEW TASK FORCE

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JUNE 2007

PREMIER'S COUNCIL ON THE STATUS OF DISABLED PERSONS

WHO ARE WE?

The Premier's Council on the Status of Disabled Persons is a body for consultation and study that was created to advise the provincial government on matters relating to the status of persons with disabilities. The Council reports directly to the Premier of the Province.

RESPONSIBILITIES

The Act governing the Premier's Council states that the Council shall advise the Minister on matters relating to the status of persons with disabilities; shall bring before the government and the public matters of interest and concern to persons with disabilities; shall promote prevention of disabling conditions; shall promote employment opportunities of persons with disabilities; and shall promote access by persons with disabilities to all services offered to the citizens of New Brunswick.

STRUCTURE

The Council consists of a Chairperson and twelve other members appointed by the Lieutenant-Governor in Council. Provisions in the Act guarantee representation by regions, agencies working on behalf of persons with disabilities and the public at large.

ACTIVITIES

To carry out its functions, the Council will receive briefs and suggestions from individuals and groups concerning the status of persons of any age with disabilities of any type; undertake research on matters relating to persons with disabilities; recommend programs concerning the status of persons with disabilities; make referrals to and consult and collaborate with universities and individuals on matters which affect persons with disabilities; propose legislation, studies and recommendations as the Council considers necessary; appoint special committees when needed; maintain an information library on subjects related to persons with disabilities and on any services/programs likely to be of interest to persons with disabilities; and offer advice and/or intervention in cases where persons with disabilities are having difficulties in gaining access to needed services.

INTRODUCTION:

We have read the document titled *Access to Information and Privacy Review – A Discussion Paper*, which was circulated by the Right to Information and Protection of Personal Information Review Task Force.

We agree that it is time for a public review of the province's *Right to Information Act* as well as other operational issues around the access and use of personal information by government officials and/or politicians.

We understand the inherent conflict between the system's need to collect and appropriately use personal information about their citizens to make decisions and to deliver public programs and services and other concerns of citizens that their private information remain protected.

Government is expected to operate with transparency and to use objective data to make evidence based decisions. However, if information is shared with the general public or competing interest groups, then people may choose not to be honest or complete when they provide information to government.

Who should decide what information should be kept from public disclosure and what information should be released just because someone asked for the material?

People are already becoming more careful as to what information they are prepared to place on the record when they do not know who might have access to that information in the future.

We also have a concern with the costs to respond to information requests as well as the costs being imposed on citizens to get copies of their own personal information and medical records required for claiming benefits or to pursue legal action with an insurance company or a lawsuit, etc…

The following pages are an attempt to answer the questions posted in the discussion paper.

1. THE CONTEXT

1.1 What type of information does the government hold that would be of interest to you/your organization/your business in the future? What method would you prefer to use to access this information?

Response: We often submit reports with recommendations for action by government. When we ask what is the status of those recommendations, we are often told that they are under review. We would like to know who is responsible to ensure that submissions made to government are acknowledged with some kind of response as to whether a decision has been made to act, or the suggestion is rejected or further review is still underway.

Secondly, we deal with different programs that have case files or medical files on clients with disabilities who want to see their full file and have a copy if they wish.

We would be happy in receiving electronic copies of requested information but some of our clients want hard copies of their information and may not have access to a computer and a printer of their own. We should be able to choose the format.

1.2 What type of information do you think should be routinely available from the government without a request under the *Right to Information Act*?

Response: Upon their request, citizens should have access to all of the information contained in their own case or medical files to ensure that their information has been accurately recorded and to allow them to have their own copy if desired.

Subjective editorial comments from staff should not be entered in the file in the first place.

1.3 A request under the *Right to Information Act* can be one page of records or over a million pages. The access to information legislation in many countries provide for practical limits on a citizen's right of access, such as excessive costs to the

taxpayers of providing the information, the undue disruption of governmental operations or repetitive requests. In your experience, has the lack of similar limitation in the New Brunswick legislation been problematic? Would you favour legislature amendments in support of such limitations? If so, which ones? In your view, what should be the criteria?

Response: There should be some reasonable limits on requests for information made by the media or political parties. Fees should go up after the first few pages of information provided for such third parties.

Individual citizens should not be excessively charged to obtain records that related to them as an individual.

2. SCOPE OF THE *RIGHTS TO INFORMATION ACT* – INSTITUTIONS

2.1 In your view, is the current coverage of institutions under the Right to Information Act adequate?

Response: We would request a clarification to ensure that records held by individual schools and/or school districts are covered under the scope of including the Department of Education.

We would like to request that municipal governments in New Brunswick also be covered under the *Act*.

2.2 What criteria should be used to determine whether or not an institution would be subject to the *Act*?

Response: If the institution is a publicly funded institution, it should be subject to the *Act*.

2.3 By what mechanism should institutions be added or removed from the list of those subject to the Act? (For example, legislation would require approval from the Legislative Assembly, while regulations would require only Cabinet approval.)

Response: Institutions could be added by regulation or legislation but should only be removed by legislation to make it more difficult to reduce accountability under the *Act*.

2.4 Should the *Act* include municipalities?

Response: Yes

2.5 Should the *Act* include universities?

Response: Yes

2.6 Should the *Act* include policing agencies (the federal law already applies to the RCMP)?

Response: Yes

2.7 Should the *Act* include other government agencies, boards and commissions? Please identify.

Response: Any new such public body created in the future should be automatically covered by the *Act*.

3. ACCESS PROCESS

3.1 Do you think the processes for making and responding to requests under the *Act* could be made easier and more effective? How?

Response: Attempts should be made to scan information to enable electronic transfer unless otherwise specified. Responses should be provided in a timely manner.

3.2 Are there ways to reduce the costs of processing access to information requests?

Response: Use electronic formats where possible.

3.3 Currently all requests are treated the same, whether the results are for personal use, commercial use or a public interest use.

Should different categories of requests or requesters be treated differently under the *Act*? (For example: general public / MLAs / commercial / users / media / non-profit / associations / professional requesters who sell information.) If so, what criteria should be used to distinguish between requesters? And what different treatment should they receive?

Response: Fees for personal use and for non-profits should be free or lower costs charged. MLA's should enjoy special access as well. Other professional or commercial users should be charged more to avoid abuse and fishing expeditions.

3.4 Currently there are no limits on the number of requests that one person or organization can make to any institution at any time. Should the *Act* limit the number of requests from a single requester to be processed at one time? By one institution? Within a year?

Response: Perhaps there would be merit in limting the number of requests allowed at one time as long as the responses are provided in a timely manner before new requests are allowed. We would be worried about too many automatic restrictions on requests as long as they have been submitted in good faith.

3.5 Most jurisdictions charge application fees ($5 to $15 - $5 in the case of New Brunswick) are charged to discourage people from making frivolous requests for information. If someone is willing to pay even a small application fee, they tend to be serious about it. Do you think government should continue to charge an application fee for each information request?

Response: People should not have to pay fees to get copies of their own personal information. Other requests should be charged a fee to discourage abuse of process.

3.6 Do you think that there should be a fee structure? Do you think that fees should be established on a cost recovery basis or should the costs of administering the right to information legislation be drawn out of the consolidated revenue fund? In other provinces, applicants are charged an hourly fee for the

amount of time it takes to search and prepare the requested documents, in addition to any copying fees. In some cases, people are only charged preparation fees if their request takes longer then 2 or 3 hours to get ready. And, sometimes, fees can be waived under certain conditions. What features to you think a fee structure should have to make sure that it is fair to everyone?

Response: There should be some fees charged but not based on full cost recovery or the service would not be available to most users.

4. REVIEW PROCESS

4.1 Does having the choice of these two review options (i.e., the Court of Queen's Bench and the Ombudsman) provide people with reasonable access to fair and independent review of their access and privacy concerns? Please explain.

Response: Yes as the services of the Ombudsman are independent and free of charge while others have the option of choosing the courts if needed.

4.2 What changes, if any, do you think could be made to improve the review processes? A number of provinces have an independent Access and Privacy Commission. Do you believe that New Brunswick would benefit from such a model or is compliance through the Ombudsman office sufficient?

Response: If we add another layer of appeal, it would only prolong the process for those with deep pockets.

5. ADMINISTRATION

5.1 What do you think could be done to improve the application process that would be simpler for applicants to make clear and complete requests for information?

Response: Allow the applicant to contact the Department or institution involved to see if they are the correct source to have

the requested information before they waste time sending the request to the wrong place.

5.2 If some kind of flexibility is built into the legislation that would allow the time for responding to an information request to go beyond 30 days, what kinds of limits should be put in place to make sure that responses continue to be provided in a timely fashion?

Response: We are not in favour of extending the limits.

5.3 Are there specific improvements to the process for accessing information that you would suggest?

Response: Applicants who require the information in an alternative format due to a disability should have the right to get their information in that format.

6. PRIVACY

6.1 Should government be required to consult with third parties before they release information even if it could delay the release of the requested information by at least a month?

Response: Third parties involved should be copied with the same information provided to the applicant or at least notified that a request has been made and a response provided.

6.2 Do the restrictions set out in the Manitoba legislation provide a reasonable balance between the expectation of confidentiality by business and the need for government to remain open and transparent about its business dealings? If New Brunswick were to adopt this type of legislation, what concerns or improvements, if any, would you have to that approach that Manitoba has taken?

Response: No comment on this question.

7. LIMITATION ON ACCESS

7.1 Are there existing limitations that you think have been interpreted too broadly or too narrowly? Are there limitations that you think are unreasonable? Are there any types of information that should be more or less restricted? Please explain why.

Response: Citizens should be able to access their own personal records without editing for convenience unless there is a compelling medical reason for doing so.

8. PROTECTION OF PERSONAL INFORMATION

8.1 Are you satisfied that the information that government collects about you is being handled in such a way that your privacy is protected? If not, what concerns do you have? What more should be done to protect your personal information.

Response: New Brunswick is a small province and many citizens have personal ties with many others who are involved with public programs, health care service, etc…

We are concerned that some government workers and other employees at public institutions are not always careful in the use of private details about clients of that program or facility.

Consumers need more evidence that employees who have access to personal information through their position or through accidental means are not discussing that information with third parties who are not required to have that information.

Consumers are worried especially about health information that could impact on their employment opportunities, insurance coverage, or be used as evidence in litigation or applications for benefits without their consent.

9. PROTECTION OF PERSONAL INFORMATION EXEMPTIONS

9.1 Do you believe that government should be allowed to create such an exemption?

Response: We question why personal information from driver's licenses are turned over to the War Amputations of Canada to facilitate fundraising. This is done without the express knowledge or consent of the drivers involved. We also question why this one charitable organization is given this data that is not provided to other worthwhile charitable groups. This practice should be ended and not extended.

9.2 If such exemptions exist, should there be safeguards to ensure that the third party does not improperly disclose the protected personal information?

Response: We would have to see the proposed exemption(s) before we could comment.

9.3 If such exemptions exist, should there be a mechanism where you can have your personal information removed from the third party's control?

Response: Personal information should not be provided to third parties without the knowledge and consent of the person involved.

9.4 If such exemptions exist, what personal information should and should not be disclosed?

Response: No information that could be used to identify the person should be released without their specific knowledge and consent.

10. PURPOSE OF COLLECTED INFORMATION

10.1 Do you have any concerns about the sharing of personal information between government departments? What types of restrictions, if any, should be in place to ensure that information is not used inappropriately? In your opinion, what rules or

protections can be put in place that would allow government departments to share information between departments in the interests of good service delivery and reduced administrative burden, while ensuring that personal information is properly protected?

Response: Personal information could be shared between government departments if logically required to meet the needs of the person. Employees should all be required to sign a general oath to protect privacy of client files before being given access to any personal files. This should be done for any seasonal or part-time workers or volunteers who might have access to personal information as well as permanent staff.

Penalties for abuse of private personal information should be clearly stated and enforced.

CONCLUSION

We are pleased to provide this input and would be happy to elaborate on any of these points if required.